

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOSEPH STANLEY PIGOTT,

Plaintiff,

v.

ROBERT M. McKENNA, *et al.*,

Defendants.

CASE NO. C07-1600-JCC-JPD

REPORT AND RECOMMENDATION

Plaintiff has presented to this Court for filing a civil rights complaint under 42 U.S.C. § 1983 together with an application to proceed with this action *in forma pauperis*. Plaintiff appears to allege in his complaint that he was improperly convicted of the crime for which he is currently incarcerated. Plaintiff seeks damages as well as injunctive relief.

Where a prisoner challenges the fact or duration of his confinement, his sole federal remedy is a writ of habeas corpus. *Preiser v. Rodriguez*, 411 U.S. 475, 489-90 (1973). In *Heck v. Humphrey*, 512 U.S. 477 (1994), the United States Supreme Court held that a § 1983 claim that calls into question the lawfulness of a plaintiff's conviction or confinement does not accrue "unless and until the conviction or sentence is reversed, expunged, invalidated, or impugned by the grant of a writ of habeas corpus." *Id.* at 489.

1 It appears from the face of the complaint that plaintiff is attempting to challenge the validity of
2 his current confinement in this § 1983 action. However, plaintiff has not demonstrated that his
3 conviction or sentence has been reversed, expunged, invalidated, or impugned.¹ Thus, under *Heck*,
4 plaintiff's § 1983 claim has not yet accrued, and is therefore not cognizable in this proceeding. As
5 plaintiff has not stated a cognizable claim for relief in these proceedings, this Court recommends that
6 plaintiff's application to proceed *in forma pauperis* be denied and that this action be dismissed,
7 without prejudice, prior to service, for failure to state a claim upon which relief may be granted under
8 § 1915(e)(2)(B)(ii). A proposed Order reflecting this recommendation is attached.

9 DATED this 15th day of November, 2007.

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12 JAMES P. DONOHUE
United States Magistrate Judge
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25 ¹ The Court notes that plaintiff previously filed a federal habeas petition challenging the
26 judgment pursuant to which he is currently incarcerated. *See Pigott v. Morgan*, C07-599-JCC. That
petition was denied on October 2, 2007. *Id.*, Dkt. No. 54.